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...No. H.-27—100,000—...

M

Home (1948) Department

M3 SERIES.

G.O. No.	4318
Dated	23-11-1948

[Despatch Abstract.]

Courts — Criminal and Civil — Permission for the accused or witness to sit ~~down~~ during proceedings: issue of instructions

LEGISLATIVE ASSEMBLY QUESTION NO.212 (STARRED)

Sri V.Raghaviah M.L.A

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Will the Hon'ble the Home Minister be pleased to state:-

(a) whether there is an existing practice in all the Magisterial and Civil Courts under which the accused or the deponents are obliged to keep standing for long periods when they are under cross examination or when the case is proceeding;

(b) whether there is any provision in the Rules made by the High Court or the Magisterial Rules warranting any such procedure; and

(c) whether the Government consider that for an accused or a deponent to be seated in a court of law is derogatory to the dignity of the Court?

Home - Department.

Answer.

(a) Accused and witnesses giving evidence are usually required to stand while the case is proceeding.

(b) Under Rule 66 of the Criminal Rules of Practice and orders it is within the discretion of the presiding judge or magistrate to permit witnesses to sit. Accused are also given permission to sit, if necessary.

(c) The answer is in the negative.

Sd- xx
For Secretary to Government

To
The Secretary, Madras Legislature,
(Assembly Section).

(The above answer has been approved by the Hon'ble .Dr. P.Subbarayan)

Home U.O. No. 49076 D/47-3
5.9.47

True Copy

Home Department

Lr./Ref. No. 49076 D/47-4
Dated 22.3.1948.

To
The Hon. the C-J.
High Court, Madras.

Hon'ble Sir,

Courts- Criminal and Civil- Permission for the accused or witnesses to sit during proceedings- Modification of existing practice-

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I am directed to say that the practice obtaining in courts according to which the accused or witnesses who give evidence are usually required to stand while the case is proceeding, was discussed in the Madras Legislative Assembly in October 1947. Under the existing rules it is within the discretion of the presiding officer to permit the accused or witnesses to sit in court. It was suggested that the accused and witnesses should be allowed to sit as a general rule and that instructions should be issued to the authorities accordingly. ~~I issued to the authorities accordingly~~. I am to request that the Hon'ble the Judges will be so good as to offer their remarks on the suggestion.

Y.O.S

True Copy

R.O. C. No.2074/48 B -1

From

P.T. Raman Nayar Esquire, I.C.S.,
Registrar, High Court of Judicature at Madras.

To
The Secretary to Government, Home Department.
Dated 27 July 1948

Sir,

Sub:- Courts- Criminal and Civil- permission for the accused or witnesses to sit during proceedings- modification of existing practice.
Ref: Your letter No.49076 D/47-4 Home dated 22-5-1948.

The Honourable the Judges are of opinion that the accused should be allowed to sit during a trial except when addressing or being addressed by the Court or when required by the Judge to stand up, as for example, for purposes of identification. As regards witnesses, their Lordships consider that they should, as a general rule, be required to depose standing but that they may be permitted to sit at the discretion of the presiding officer.

Yours faithfully

Sd- x x x

R E G I S T R A R.

True Copy

Home Department,

Lr./Ms.No.4318 Dated 23-11-48

To
The Hon'ble the C.J.
High court, Madras.

Hon'ble Sir,

Courts- Criminal and Civil- Permission for the accused or witnesses to sit during proceedings- Issue of instructions.
Ref:Correspondence resting with Mr. Raman Nayar's Lr. R.o.c. No.2074/48-B1 dated 27.4.48

I am to say that the Government agree with the views of the Hon'ble the Judges expressed in the letter cited. The Government consider that a uniform procedure should be observed by all civil and criminal courts in this matter. I am to request that if the Hon'ble the Judges agree, suitable instructions may be issued to them and a copy of those instructions may kindly be sent to the Government for information.

Yours faithfully,
V.K.D
3-8-48

True Copy

R.O.C. No.2074 of 1948-B-1

From

K.N. Ganapati Esquire, B.A.,Bar-at-Law,
Registrar, High Court, Madras.

To
The Secretary to Government,
Home Department, Madras (with enclosure)

Sir,

Dated 7th December 1948.

Courts- Criminal and Civil- Permission for the accused and witnesses to sit during proceedings- Instructions- Your letter Ms. No.4318 dated 25-11-1948.

I enclose a copy of High Court's Circular on the above subject for information.

Sd/- x x x
Registrar.

Home Dept.

Submitted for perusal
My be lodged and filed with the letter at (E)

True Copy

P.DIS. No.722 of 1948

CIRCULAR.

Courts- Criminal and Civil- accused and witnesses- permission to sit during proceedings- Instructions.

The High Court directs that the accused in Criminal Proceedings should be allowed to sit during trial except when addressing or being addressed by the Court or when required by the Court to stand up, as for example, for purposes of identification.

Witnesses appearing in Criminal and Civil Proceedings should, as a general rule, be required to depose standing but may be permitted to sit at the discretion of the court.

Sd/- x x x x
For Registrar.

High Court, Madras.
Dated 7th December 1948.

To
All District and Sessions Judges (with a request to communicate the Circular to their subordinate courts)
All District Magistrate -do- -do-
The Chief Presidency Magistrate, Madras -do-
The Chief Judge, Court of small causes. -do-
The Principal Judge, City Civil Court, Madras.
The clerk of the Crown, Original, side, High court, Madras
Copy to
The Secretary to Government Home Department, Madras (with covering letter.)

True Copy

157 Q- Sri V.RAGHAVAYYA:- Will the Hon. the Home Minister be pleased to state:-

(a) whether there is an existing practice in all the magisterial and civil courts under which the accused or the deponents are obliged to keep standing for long periodswhen they are under corss-examination or when the case is proceeding.

(b) whether there is any provision in the rules made by the High Court or under the Magisterial Rules warranting any such procedure; and

(c) whether the Government consider that for an accused or a deponent to be seated in a curt of law is derogatory to the dignity of the court?

The Hon. Dr. P.Subbarayan:- "(a) Accused and witnesses giving evidence are usually required to stand while the case is proceeding.

(b) Under rule 66 of the Criminal Rules of Practice and Orders it is within the discretion of the presiding judge or magistrate to permit witnesses to sit. Accused are also given permission to sit, if necessary.

(c) The answer is in the negative".

Sri.V.Raghavayya:- "Are the Government aware of the practice in other countries of the accused before he is convicted being allowed to sit as a matter of right and not as a matter of mercy?

The Hon. Dr. P.Subbarayan:- "It may be the practice in other countries, but the practice in this country is different".

Sri V.Raghavayya:- "May I know whether the Government do not think that on equitable grounds a man's liberty should not be curtailed by being asked to stand in a court of law when he is called upon to answer a charge against him as if he were a criminal even before he was convicted?

The Hon. Dr. P.Subbarayan:- I am sorry Sir, but the hon. Member must know that the usual practice is that when a case is filed by the police it is done after careful enquiry when there is prima facie justification for the filing of a case. It has been usual in this country for the accused to stand in the dock".

Sri T.Viswanatham:- May I ask whether the Government will not think of changing the present practice and giving chairs to sit on not only to the accused but also to the witnesses in all the courts, as that is a civilized practice?

The Hon. Dr.P.Subbarayan:- The hon. Member who is himself a member of the Bar ought to know that even lawyers have got to stand in the Court while arguing cases"

M.Muhammad Ismail Sahib Bahadur:- May I know Sir, whether the practice in this country in this matter cannot be changed after the 15th August 1947?

The Hon. Dr.P.Subbarayan:- "I am accustomed to other courts of law as well. I would point out to the hon. Member that in England which is an advanced country, the accused do have to stand in the dock.

Abdul Hameed Khan Sahib Bahadur:- "On a point of order, Mr. Speaker, may I ask you to give a ruing whether an hon. Member can sit on the Treasury Benches and ask questions?

The Hon.Dr.P.Subbarayan:- "May I point out Sir, that the hon. Member (Sri T.Viswanatham) is not sitting on the Treasury Bench but is making use of the mike here. I think he is perfectly entitled to do it and if anybody is to object to that, it should be the Members on the Treasury Bench and not the Members on the Opposition."

Abdul Hameed Khan Sahib Bahadur:- "May I ask you whether I have no right to ask you for a ruling in this matter?

Mr. Speaker:- Yes, the Hon. Member has a right"

Sri K.Varadachari:- "Does the Hon. the Home Minister who is himself a barrister know that lawyers are allowed to sit in courts when they are not arguing?

The Hon.Dr.P.Subbarayan:- "But when they address the court they do so standing. The hon. Member knows it as well as I do.

Sri V.Raghavayya:- Are the Government aware that several respectable people in the country are unwilling to go to courts of law because they are obliged to stand hours of eerr cross-examination standing?

The Hon.Dr.P.Subbarayan:- "I am sorry, Sir, because I think that if a man is interested in a case, he does go to a court and stand cross-examination".

Sri R.V. Swaminatham :- "As the Hon.Dr.Subbarayan has had experience of foreign countries, may I know what is the practice in foreign countries with regard to undertrials?.

The Hon. Dr.P.Subbarayan:- "The only foreign country I know about is England and I have given my reply about that".

Begum Sultan Mir Amiruddin:- "May I know whether it is not a fact that the accused and the deponent when they are in feeble health and unable to stand for long, are permitted to sit down?

The Hon. Dr.P.Subbarayan:- "That is so. The courts have power to let them sit down if sufficient reasons are found"

Sri K.Anandan Nambiyar:- "Will the Government at least now change the procedure and give facilities for the accused to sit?

"A"-

The Hon. Dr.P.Subbarayan:- "The matter will have to be carefully examined".

Note

Please see the Assembly proceedings extracted on pp.4 -5 above, particularly the portion marked "A" above . The suggestion appears to be that the existing practice according to which descrition rested in the court to permit the accused and witnesses to sit in the court should be modified and instructions should be issued to them that the accused and witnesses should be allowed seats as a general rate. If the question is to be pursued the High Court will have to be consulted.

The case may be circulated to H.M (Home) for orders whether the question of changing the existing practice should be pursued.

I don't think any witnesses or accuted persons are so sensitive about their being made to stand when they depose or make a statement.

As a rule, they occupy the special boxes set apart for them and they would not be fully visible or audible to the presiding judge if they sit therein.

Cases of physical weakness or illness are always dealt with appropriately by the presiding judge who readily provides them with a seat. The discretion rested in him is always properly used.

I see no need for a departure from existing practice.

A draft letter to the High Court on is submitted for approval with reference to H.M's minute on p.6 ante.

(Issued as Lr. No.49076-D/47-4 Home dated 22.3.48)

From the High Court Roc. No.2074/48-B1 dated 27.7.48.

With reference to the orders on p.6 ante, please see the high court's remarks on p.13 c.f.

1. Witness:- While under the existing rule 66 of the Criminal Rules of Practice, it is entirely within the discretion of the presiding judge to require a witness to stand or permit him to sit. The High Court considers that they should as a general rule, be required to depose standing but that they may be permitted to sit at the discretion of the presiding officer.

2. Accused:- There is no rule at present in regard to the accused. The existing practice is that they are required to stand while the case is proceeding and the court may permit the accused to sit, if necessary. The Hon'ble the judges are of opinion that the accused should be allowed to sit during a trial except when addressing or being addressed by the Court or when required by the judge to stand up, as for example, for purposes of identification.

2. The High Court does not apparently consider any amendment to the rules necessary. It may perhaps be asked to issue suitable instructions to the civil and criminal courts and send a copy to the Government for information. The draft letter submitted is for approval. The file may perhaps be circulated to H.Pr. before issue of the draft.

In the case of the accused the option may be given to them to stand or sit, as in many courts they will not be seen nor can they see anything if they sit down. In any case the draft may issue, as it is, as we are leaving it to the H.C to issue instructions to obtain uniformity of pratice. I would have it suggested to the H.C that the words "may be allowed to sit" be substituted for the words "should be allowed to sit" at X on page 13 c.f.

I agree with H.M. Agricultural but we will have to specifically state when the witnesses are giving evidence on the accused are making statements they should stand except when they are specially permitted by the court to sit for reasons such as illness or oldage etc.

H.M (Agri) may see the minute of H.Pr.

The present position is exactly as required by H.Pr and the H.C's letter at page 13 cf says so. The draft only says that the Govt agree with H.C and instructions may be issued accordingly. A specific statement in our draft as required by H.Pr would take away the discretion of the court to allow a witness to sit even if he is not sick or old. The practice is that witnesses sit only after obtaining permission. It will be a bit awkward to state in a draft "witnesses when they are giving evidence" for the question arises only when they are giving evidence. At other times in court who is a witness can sit or stand as the likes -So it is better to leave the draft as it is.

Home Secretary. Please see whether I am correct.

The It appears to me that H.M (Agri) is correct and any

amplification as suggested by H.Pr. may create needless difficulties. The draft as it is may issue.

(Issued as Lr. Ms. No.4318 Home dated 23.11.1948- pp 15-16 cfs)

True Copy

Superintendent 22/11/93.
Madras Record Office.

KK

27-5